

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

NANCY CROWDER , as attorney in fact for Billy Vestal, Plaintiff	Case No. 1:13-00003
vs	Hon. Haynes
MARSHALL COUNTY, TENNESSEE and DONNELL KELLY , Defendant	JURY DEMAND

MOTION FOR COSTS OF SERVICE OF SUMMONS

Plaintiff moves for costs and attorney fees related to serving Defendant Donnell Kelly with a summons and complaint.

Pursuant to F.R.C.P. 4(d)(2), the Court “must impose on the defendant” the expenses incurred in making service if a defendant, without good cause, fails to sign and return a waiver requested by a plaintiff. The costs to be imposed shall include the costs of effecting service, together with attorney’s fees related to any motion to collect the costs of service. F.R.C.P. 4(d)(2)(B).

On January 17, 2013, a request for waiver of service was sent to Defendant Donnell Kelly by first class mail to his last known address. (Exhibit 1, Affidavit of Counsel). On February 19, 2013, a second request was mailed to Mr. Kelly at a corrected home address. Both requests fully complied with the applicable requirements of Rule 4. Neither waiver form was ever returned to Plaintiff’s counsel as requested. On February 20, 2013, the undersigned called and left a voicemail message at Mr. Kelly’s last known cellular telephone number informing him that the undersigned was the attorney representing the plaintiff and that the plaintiff had filed a lawsuit against him and that a request for waiver of service had been mailed to him. The message also informed Defendant Kelly that if he failed to return the waiver of service that formal process would be issued against him and that he risked having costs assessed against him. No return call

was ever received from Defendant or anyone claiming to represent him.

On March 20, 2013, the undersigned personally traveled to the U.S. District Court Clerk's office in Nashville, Tennessee, to have summons issued by the clerk. (D.E. 10) On March 22, the undersigned personally served a copy of the summons and the First Amended Complaint (D.E. 4) to Mr. Kelly at his home address, the same home address to which the request for waiver of service had been mailed. During service, Defendant Kelly, without being asked, freely offered an admission that he had received the request for waiver of service and had discussed signing it with his attorney.

Plaintiff requests this Court to assess against Defendant Kelly all costs associated with serving him with formal process, including attorneys' fees associated with drafting this motion and associated affidavit. The costs requested are **\$51.98** for travel (D.E. 11) and **\$672** in attorney fees (1.6 hours at \$420 per hour) for a total of **\$723.98**.

Respectfully submitted,

/s/ Jerry Gonzalez
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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of Electronic Filing to the following:

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Attorney for Donnell Kelly

This the 18th day of April, 2013.

/s/ Jerry Gonzalez